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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,333	12/12/2001	Thomas R. Tudor	SEA-147-D	4153

7590 05/23/2005

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EXAMINER

FETSUGA, ROBERT M

ART UNIT PAPER NUMBER

3751

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/023,333

Applicant(s)

TUDOR ET AL.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-18 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-18 and 20-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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1. The finality of the Office action mailed September 16, 2002 is hereby withdrawn as the stated statutory prior art basis associated with the Brennan et al. patent was incorrect. Accordingly, the amendment filed December 23, 2002 has been entered.

2. The proposed drawing correction filed on August 06, 2002 has been approved.

3. The disclosure is objected to because of the following informalities: Paragraph 0033, line 3, "10c" apparently should be --10b--, and line 10, "18a" apparently should be --18e--.

Appropriate correction is required.

4. The amendment filed December 23, 2002 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Paragraphs 0026 and 0027 where the term "monolithic" has been added. An accepted definition (copy cited herewith) of "monolithic" is massive, solid, and uniform. Elements 14 and 16 of applicant's disclosure may be "solid" (i.e. not spongy), but are neither "massive" nor "uniform".

Applicant is required to cancel the new matter in the reply to this Office Action.

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5. Claims 1, 4, 9 and 14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims recite a "monolithic" tubular nozzle member/hollow tubular housing/tubular member and a "monolithic" insert. This term is not found in the originally filed disclosure and is therefore considered to be new matter.

Applicant implies at pages 3-4 of the response filed December 23, 2002 this term means "single piece". However, the examiner has not found such a definition. Applicant has not pointed out any basis for this intended meaning of the term. Moreover, elements 14 and 16 of the instant invention could each be manufactured from separate pieces connected together.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an

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application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4, 6 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Brennan et al.

The Brennan et al. (Brennan) reference discloses a dispensing apparatus comprising: a hollow tubular housing 16 including an annular shoulder surface (receiving 12); an insert 12 including an aperture 14; and a static mixer 26, as claimed. The housing 16 and insert 12 of Brennan are "monolithic" or "single piece" in the same sense as with applicant's disclosed invention. The shoulder "surface" is clearly illustrated in Fig. 3A, and the insert 12 would clearly engage that surface. Claim 4 does not specify the insert as engaging the shoulder.

8. Claims 4, 5, 8-10, 12-17 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller.

The Miller reference discloses a dispensing apparatus comprising: a hollow tubular housing/tubular member 37 including an annular shoulder surface (receiving 43); and an insert 40 including a flange 43, as claimed. The housing 37 and insert 40 of Miller are "monolithic" or "single piece" in the same sense as with applicant's disclosed invention.

9. Claims 1-6, 8-18 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brennan, Miller and Keller et al.

Re claims 8 and 9, although the insert of the Brennan dispensing apparatus does not include a flange, as claimed, attention is directed to the Miller reference which discloses an analogous dispensing apparatus which further includes an insert 40 having a flange 43. Therefore, in consideration of Miller, it would have been obvious to one of ordinary skill in the dispensing apparatus art to associate a flange with the Brennan insert in order to facilitate material flow.

Re claim 1, the Brennan tubular nozzle member 16 further includes a tip portion 18 having a shoulder (supporting 26), a conical nozzle bore (Fig. 3A), and a main body 20. Although the tip portion of the Brennan nozzle member does not include stepped reductions, as claimed, attention is directed to the Keller et al. (Keller) reference which discloses an analogous

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nozzle member which further includes a tip portion 18 having stepped reductions (Fig. 7). Therefore, in consideration of Keller, it would have been obvious to one of ordinary skill in the tubular nozzle art to associate stepped reductions with the Brennan tip portion in order to facilitate length adjustment.

10. Applicant's remarks have been fully considered and have been previously addressed.

11. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

12. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", is positioned above the typed name.

Robert M. Fetsuga  
Primary Examiner  
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